THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Rev. A.S.M.P.No.1960 of 2013 in **A.S.No.1445 of 1989**

ORDER:

This application is filed to review the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989 of this Court.

2. The facts leading to the filing of this review petition are as under :

(i) One Dechiraju Venkatarao filed a petition O.A.No.145/1983 under Section 77(1)(a) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments, 1966 (for short "Act 17 of 1966) before the Deputy Commissioner of Endowments, Guntur to declare that Dechirajuvari choultry, Pedanandipadu in Bapatla Taluk and its properties are private properties of his family. The Assistant Commissioner, Endowments Department, Guntur contested the said Original Application.

(ii) By order dt.26-03-1985, the said Original Application was dismissed holding that the said choultry is a "public charitable institution" within the meaning of Section 2(4) of the Act 17 of 1966 and the property to an extent of Ac.37-00 cents etc. given for its

maintenance is a “public charitable endowment” within the meaning of Section 2(3) of the said Act.

(iii) Challenging the same, O.S.No.44 of 1985 was filed by Dechiraju Venkatarao before the District Judge, Guntur under Section 78 of the said Act praying that it be set aside, to declare that Dechirajuvari choultry and its properties mentioned in Schedule ‘B’ are not properties of a charitable institution, that plaint ‘A’ schedule property is not a charitable institution, and for costs.

(iv) The said suit was dismissed with costs by judgment and decree dt.24-04-1989.

(v) During the pendency of the above suit, however, w.e.f 25-05-1987, Act 17 of 1966 was repealed by the Andhra Pradesh Charitable and Hindu Religious Endowments Act, 1987 (for short the “Act 30 of 1987”). Section 155(1) of Act 30 of 1987 repealed Act 17 of 1966. However, clause (d) of sub-section (2) of Section 155 stated that notwithstanding such repeal, any remedy by way of right of application, suit or appeal which is provided by Act 30 of 1987, shall be available in respect of proceedings under repealed Act 17 of 1966, pending at the commencement of Act 30 of 1987 as if the proceedings in respect of which the remedy is sought, had been instituted under Act 30 of 1987.

(vi) Neither the parties nor the District Court, Guntur, which decided the O.S.No.44 of 1985, noticed this provision of law and the suit was continued and decided as if the Civil Court continued to have jurisdiction even after Act 30 of 1987 came into force on 25-05-1987.

(vii) After the suit was decided on 24-04-1989, Dechiraju Venkatarao preferred A.S.No.1445 of 1989 before this Court. Pending appeal he died and his legal representatives were brought on record vide order dt.14-11-2006 in A.S.M.P.No.2168 of 2006 in the said appeal.

(viii) By judgment dt.07-06-2007, the said appeal was also dismissed confirming the judgment and decree dt.24-04-1989 in O.S.No.44 of 1985 of the District Judge, Guntur.

(ix) Even in this appeal, Section 155 of Act 30 of 1987 was not noticed by this Court. None of the parties also brought it to the notice of the Court.

(x) The legal representatives of Dechiraju Venkatarao also preferred a Special Leave Petition No.21041 of 2007 before the Supreme Court of India. The Special Leave Petition was also dismissed on 20-11-2007 by a non-speaking order.

3. Thereafter, the legal representatives of Late

Dechiraju Venkat Rao filed A.S.M.P.No.3269 of 2012 to condone delay of 1608 days in filing the petition seeking review of the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989; and ASMP.NO.1960/2013 to review it. By order dt.30-07-2013, ASMP.No.3269/2012 was allowed on payment of costs of Rs.5,000/- to the learned counsel for 3rd respondent. The said costs were accordingly paid on 05-08-2013.

4. The review petitioners contend that Act 17 of 1966 stood repealed by S.155(1) of Act 30 of 1987 w.e.f 25-05-1987; so after the said date, the suit O.S.No.44 of 1985 filed under Section 78 of Act 17 of 1966 could not have been continued and decided and the judgment and decree dt.24-04-1989 therein of the District Judge, Guntur is a nullity; the judgment of the High Court confirming the said judgment is also a nullity; that findings recorded by both the Courts are *non-est* in law; that in view of the judgment of the Supreme Court in **Kunhayammed and others Vs. State of Kerala and another**[1] and **National Housing Coop. Society Ltd. Vs. State of Rajasthan and others**[2], dismissal of Special Leave Petition at the stage of special leave by a non-speaking order would not bar the filing of a review application in the High Court as doctrine of merger would not be attracted. They therefore

prayed that the review be allowed and the judgment and decree dt.7.6.2007 in A.S.No.1445 of 1989 confirming the judgment and decree dt.24.4.1989 in O.S.No.44 of 1985 of the District Judge, Guntur, be set aside.

5. Heard Sri Addepalli Suryananarayana, learned counsel for the petitioners and Sri V.T.M.Prasad, learned counsel for respondents.

6. The learned counsel for the petitioners contended that there is an error apparent on the face of record in the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989 confirming the judgment and decree dt.24-04-1989 in O.S.No.44 of 1985; that in view of Section 155 of Act 30 of 1987, the District Court at Guntur could not have continued and decided O.S.No.44 of 1985 filed under Section 78 of Act 17 of 1966 after 25-05-1987 when Act 17 of 1966 was itself repealed; that in view of section 155(2)(d) of Act 30 of 1987, a remedy of appeal had been provided under Section 88 of Act 30 of 1987 against the orders of the Deputy Commissioner to the District Judge and therefore, in view of Section 155(2)(d) of Act 30 of 1987, the District Court at Guntur should have returned the plaint by invoking Order VII Rule 10 of the Code of Civil Procedure, 1908 to late Dechiraju Venkatarao; but instead of doing so without noticing the provisions of Act

30 of 1987, the District Judge, Guntur proceeded to decide the suit; therefore, the judgment and decree in O.S.No.44 of 1985 of the District Judge, Guntur is a nullity; that the confirmation of such a decree and judgment passed by a Court which had no jurisdiction to pass such judgment and decree, by the High Court in an appeal under Section 96 of the Code of Civil Procedure, 1908 (by judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989) also have no effect and the judgment and decree of the High Court would also be nullity; that neither the District Court nor the High Court could have been conferred any jurisdiction by either of the parties by their consent, when the provisions of the statute i.e Act 30 of 1987 specifically and clearly denude them of jurisdiction; as the provisions of Act 30 of 1987 have not been noticed by the District Judge or by this Court, there is a clear error apparent on the fact of the record warranting review of the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989. He also placed reliance on the decision in **Hasham Abbas Sayyad V. Usman Abbas Sayyad and Ors.**[3]

7. *Per contra,* the learned counsel for the respondents contended that there are no merits in the review petition; that notwithstanding the repeal of Act 17 of 1966 by Act 30 of 1987, the jurisdiction of the District Judge to entertain the suit O.S.No.44 of 1985 against the order

dt.26-03-1985 in O.A.No.145 of 1983 of the Deputy Commissioner, Endowments Department, Guntur continued and the said Court was competent to decide the suit; that the High Court rightly confirmed the said judgment in O.S.No.44 of 1985 in A.S.No.1445 of 1989; and once the judgment of the High Court was confirmed by the Supreme Court by dismissing the S.L.P.No.21041 of 2007, it was not open to the petitioner to seek review of the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989.

8. I have noted the contentions of both the parties.

9. The suit O.S.No.44 of 1985 was filed invoking Section 78 of Act 17 of 1966 before the District Judge, Guntur by late Dechiraju Venkatarao challenging the order dt.26-03-1985 in O.A.No.145 of 1983 of the Deputy Commissioner, Endowments Department, Guntur passed under Section 77 of Act 17 of 1966.

10. Act 30 of 1987 was enacted by the Andhra Pradesh State Legislature with effect from 25-05-1987. Section 155 of the Act states:

> *"S.155. Repeals and Savings :- (1) The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,1966 and the Tirumala Tirupathi Devasthanams Act, 1979 are hereby repealed.*
>
> *(2) Notwithstanding such repeal-*

… … … … … …

(d) any remedy by way of right of application, suit or appeal which is provided by this Act, shall be available in respect of proceedings under the repealed Acts pending at the commencement of this Act, as if the proceedings in respect of which the remedy is sought had been instituted under this Act;"

11. A reading of the above provision indicates that Act 30 of 1987 repealed the Act 17 of 1966. Clause (d) to sub-section(2) of Section 155 provided that notwithstanding such repeal, any remedy by way of right of application, suit or appeal which is provided by Act 30 of 1987, shall be available in respect of proceedings under Act 17 of 1966, pending at the commencement of Act 30 of 1987, as if the proceedings in respect of which the remedy is sought had been instituted under Act 30 of 1987.

12. Thus, after Act 30 of 1987 came into force from 25-05-1987, since there is no clause therein saving the proceedings pending under repealed Act 17 of 1966 and enabling them to be continued notwithstanding such repeal, the Civil Court had no jurisdiction to continue the suit after 25-05-1987. The only course of action which the District Judge, Guntur could have adopted after 25-05-1987 in O.S.No.44 of 1985 was to return the plaint to late Dechiraju Venkatarao. In my opinion, the District Court, Guntur could not have decided O.S.No.44 of 1985 in the

absence of any jurisdiction conferred under Act 30 of 1987 on the said Court to decide the suit after 25-05-1987. Therefore, I am of the opinion that the judgment and decree dt.24-04-1989 in O.S.No.44 of 1985 has been rendered by a Civil Court which had no jurisdiction to pronounce them and therefore such judgment and decree have to be treated as a nullity.

13. In **Kiran Singh and others. V. Chaman Paswan and others**[4], the Supreme Court declared:

> "*6… … It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution or even in collateral proceedings. A defect of jurisdiction, whether it is a pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.*"

14. Similar view has been expressed in **Hasham Abbas Sayyad** (3 supra). In the said case, the Supreme Court observed :

> *"21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even*
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> *res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity,*

the same ordinarily should not be given effect to. (See Chief Justice of Andhra Pradesh and Another V. L.V.A. Dikshitulu and others, AIR 1979 SC 193 and MD Army Welfare Housing Organisation V. Sumangal Services (P) Ltd. (2004) 8 SCC 619].

22. This aspect of the matter has recently been considered by this Court in Harshad Chairman Lal Modi V. DLF Universal Ltd. and Another [(2005) 7 SCC 791], in the following terms:
'We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. Sofar as territorial and pecuniary jurisdiction are concerned, objections to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.'

[See also Zila Sahakari Kendrya Bank Maryadit V.Shahjadi Begum and Ors., 2006(9) SCALE 675 and Shahbad Co-op. Sugar Mills Ltd. V. Special Secretary to Govt. of Haryana and Ors. 2006(11) SCALE 674 para29]. (emphasis supplied)

15. Admittedly, the provisions of Section 155 of Act 30 of 1987 were not noticed by the District Judge, Guntur when he decided O.S.No.44 of 1985 or by this Court when it decided A.S.No.1445 of 1989. If the District Judge, Guntur had no jurisdiction to decide O.S.No.44 of

1985, this Court also had no jurisdiction to entertain an appeal therefrom under Section 96 of the Code of Civil Procedure Code, 1908. Therefore, the judgment and decree dt.07-06-2007 in A.S.No.1445 of 1989 has also to be declared a nullity.

16. As rightly contended by the learned counsel for petitioners, in **Kunhayammed** (1 supra), the Supreme Court held that dismissal of a Special Leave Petition at the stage of special leave by a non-speaking order would not bar the filing of a review application in the High Court as doctrine of merger would not apply. It held :

> *"18. In our opinion what has been stated by this Court applies also to a case where a special leave petition having been dismissed by a non-speaking order, the applicant approaches the High Court by moving a petition for review. May be that the Supreme Court was not inclined to exercise its discretionary jurisdiction under Article 136 probably because it felt that it was open to the applicant to move the High Court itself. As nothing has been said specifically in the order dismissing the special leave petition one is left merely guessing. We do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made out merely because a special leave petition under Article 136 of the Constitution had already stood rejected by the Supreme Court by a non-speaking order."(emphasis supplied)*

This has also been reiterated in **National Housing Coop. Society** (2 supra).

17. Therefore, I am of the opinion that the dismissal of S.L.P.No.21041 of 2007 at the stage of special leave by the non-speaking order dt.20-11-2007 did not bar the filing of present review petition.

18. It is pertinent to note that under Act 30 of 1987, Section 87 empowered the Deputy Commissioner to enquire into and decide any disputes as to the question whether an institution or endowment is a charitable institution or endowment; whether an institution or endowment is a religious institution or endowment; whether any property is an endowment, if so whether it is a charitable endowment or a religious endowment etc. Section 88 provided for appeal against the decision of the Deputy Commissioner to the District Judge initially.

19. Subsequently, Section 87 of Act 30 of 1987 has been amended by Act 33 of 2007 (w.e.f 03-01-2008) and an Endowment Tribunal has been constituted to enquire into and decide the above referred disputes. Section 88 has also been amended by Act 33 of 2007 (w.e.f 03-01-2008) providing for an appeal to the High Court from the decision of the Endowment Tribunal under Section 87.

20. Thus, after Act 30 of 1987 came into force on 25-05-1987 although the Deputy Commissioner had jurisdiction

to decide the above dispute, by virtue of Act 33 of 1987 w.e.f
03-01-2008, even his jurisdiction to decide the said issues has been taken away and has been conferred on the Endowments Tribunal. Be that as it may, on the day when O.A.No.145 of 1983 was decided by the Deputy Commissioner, Endowments Department, Guntur i.e. 26-03-1985, he did not have jurisdiction to decide it.

21. As the judgments and decrees in O.S.No.44 of 1985 and A.S.No.1445 of 1989 are both declared as a nullity and the findings recorded therein are held to be without jurisdiction *supra*, the said orders are accordingly *set aside.* It is open to the petitioners to avail an appropriate remedy to challenge the order dt.26-03-1985 in O.A.No.145 of 1983 of the Deputy Commissioner, Endowments Department, Guntur, if they so choose.

22. For the above reasons, the Review Petition is allowed. No costs.

JUSTICE M.S. RAMACHANDRA RAO

Date: 21.08.2013
vsv

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[1] (2006) 6 S.C.C. 359
[2] (2005) 12 S.C.C. 149
[3] AIR 2007 S.C. 1077(1)

[4] A.I.R. 1954 S.C. 340